

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CORTEZ E. BALLARD,

Defendant-Appellant.

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UNPUBLISHED

June 12, 1998

No. 200618

Recorder's Court

LC No. 96-500611

Before: Wahls, P.J., and Jansen and Gage, JJ.

MEMORANDUM.

Defendant appeals as of right his conviction and sentence for felonious assault, MCL 750.82; MSA 28.277, and felony-firearm, MCL 750.227b; MSA 28.424(2), entered after a bench trial. We affirm.

On appeal, defendant contends that the trial court erred in scoring the sentencing guidelines factors, and that his one to four year sentence for felonious assault is disproportionate when viewed together with his felony-firearm sentence. These arguments are without merit.

The sentencing guidelines do not have the force of law, and the claim that a variable was miscalculated does not raise a legal error. *People v Mitchell*, 454 Mich 145, 175; 560 NW2d 600 (1997). An alleged error in a judge's calculation of a sentencing variable does not state a cognizable claim for relief. *Id.*, p 176.

Defendant's sentence is within the guidelines range, and he has failed to identify any circumstances which would overcome the presumption that the sentence is proportionate. *People v Bailey (On Remand)*, 218 Mich App 645, 647; 554 NW2d 391 (1996). The cumulative effect of the mandatory two year consecutive felony-firearm sentence is irrelevant for determining the proportionality of defendant's sentence. *People v Hardy*, 212 Mich App 318, 320-321; 537 NW2d 267 (1995).

Affirmed.

/s/ Myron H. Wahls

/s/ Kathleen Jansen

/s/ Hilda R. Gage